

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID RIVERA,

**DEFENDANT PICHARDO'S
ANSWER TO COMPLAINT**

Plaintiff,

Docket No: 16-CV-2874 (PKC)(RER)

-against-

CITY OF NEW YORK,
DIANA PICHARDO, individually,
EMILIO APONTE, individually,
JOHN DOE 1 through 17, individually, and
JANE DOE 1, individually, (the names John
and Jane Doe being fictitious, as the true names
are presently unknown),

Jury Trial Demanded

Defendants.

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Defendant Sergeant DIANA PICHARDO (hereinafter, "Defendant" or "Pichardo"), by her attorney Andrew C. Quinn, Esq. of the Quinn Law Firm, for her answer to plaintiff's complaint (the "Complaint"), respectfully alleges, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. Denies the allegations set forth in paragraph "1" of the Complaint, except admits only that plaintiff purports to bring this action and assert claims as stated therein.

JURISDICTION

2. Denies the allegations set forth in paragraph "2" of the Complaint, except admits only that plaintiff purports to bring this action and assert claims as stated therein.

3. Denies the allegations set forth in paragraph “3” of the Complaint, except admits only that plaintiff purports to invoke the Court’s jurisdiction as stated therein.

VENUE

4. Denies the allegations set forth in paragraph “4” of the Complaint, except admits only that plaintiffs purport to lay venue as stated therein.

JURY DEMAND

5. Denies the allegations set forth in paragraph “5” of the Complaint, except admits only that plaintiffs purport to demand a trial by jury.

PARTIES

6. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the Complaint.

7. Denies the allegations set forth in paragraph “7” of the Complaint except admits that City of New York is a municipal corporation of the state of New York.

8. Denies the allegations set forth in paragraph “8” of the Complaint except admits that the City of New York is a municipal corporation which maintains a police department.

9. Denies the allegations set forth in paragraph “9” of the Complaint except admits that Defendant Pichardo was acting under the color of law and within the scope of her employment with the City of New York.

10. Denies the allegations set forth in paragraph “10” of the Complaint except admits that Defendant Pichardo was acting under the color of law and within the scope of her employment with the City of New York.

11. Denies the allegations set forth in paragraph “11” of the Complaint except admits that Defendant Pichardo was acting under the color of law and within the scope of her employment with the City of New York.

FACTS

12. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint.

13. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Denies the allegations set forth in paragraph “14” of the Complaint.

15. Denies the allegations set forth in paragraph “15” of the Complaint except admits that Defendant Pichardo arrived at the location.

16. Denies the allegations set forth in paragraph “16” of the Complaint.

17. Denies the allegations set forth in paragraph “17” of the Complaint.

18. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Denies the allegations set forth in paragraph “19” of the Complaint.

20. Denies the allegations set forth in paragraph “20” of the Complaint.

21. Denies the allegations set forth in paragraph “21” of the Complaint.

22. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Complaint.

23. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “23” of the Complaint.

24. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the Complaint.
25. Denies the allegations set forth in paragraph “25” of the Complaint.
26. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the Complaint.
27. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the Complaint.
28. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the Complaint.
29. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the Complaint.
30. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the Complaint.
31. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.
32. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the Complaint.
33. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the Complaint.
34. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Complaint.
35. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “35” of the Complaint.

36. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the Complaint.

37. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the Complaint.

38. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the Complaint.

39. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “39” of the Complaint.

40. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the Complaint.

41. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “41” of the Complaint.

42. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “42” of the Complaint.

43. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint.

44. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the Complaint.

45. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45” of the Complaint.

46. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the Complaint.

47. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint.

48. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint.

49. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “49” of the Complaint.

50. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “50” of the Complaint.

51. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “51” of the Complaint.

52. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “52” of the Complaint.

53. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the Complaint.

54. Denies the allegations set forth in paragraph “54” of the Complaint.

55. Denies the allegations set forth in paragraph “55” of the Complaint.

56. Denies the allegations set forth in paragraph “56” of the Complaint.

57. Denies the allegations set forth in paragraph “57” of the Complaint except admits that a complaint was filed with CCRB.

58. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “58” of the Complaint.

59. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the Complaint.

60. Denies the allegations set forth in paragraph “60” of the Complaint.
61. Denies the allegations set forth in paragraph “61” of the Complaint.
62. Denies the allegations set forth in paragraph “62” of the Complaint.
63. Denies the allegations set forth in paragraph “63” of the Complaint.
64. Denies the allegations set forth in paragraph “64” of the Complaint.
65. Denies the allegations set forth in paragraph “65” of the Complaint.
66. Denies the allegations set forth in paragraph “66” of the Complaint.
67. Denies the allegations set forth in paragraph “67” of the Complaint.
68. Denies the allegations set forth in paragraph “68” of the Complaint.
69. In response to the allegations set forth in paragraph “69” of the Complaint,

Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

70. Denies the allegations set forth in paragraph “70” of the Complaint.
71. Denies the allegations set forth in paragraph “71” of the Complaint.
72. Denies the allegations set forth in paragraph “72” of the Complaint.
73. In response to the allegations set forth in paragraph “73” of the Complaint,

Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

74. Denies the allegations set forth in paragraph “74” of the Complaint.
75. Denies the allegations set forth in paragraph “75” of the Complaint.
76. Denies the allegations set forth in paragraph “76” of the Complaint.

77. In response to the allegations set forth in paragraph “77” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

78. Denies the allegations set forth in paragraph “78” of the Complaint.

79. Denies the allegations set forth in paragraph “79” of the Complaint.

80. Denies the allegations set forth in paragraph “80” of the Complaint.

81. In response to the allegations set forth in paragraph “81” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

82. Denies the allegations set forth in paragraph “82” of the Complaint.

83. Denies the allegations set forth in paragraph “83” of the Complaint.

84. In response to the allegations set forth in paragraph “84” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

85. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “85” of the Complaint.

86. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “86” of the Complaint.

87. In response to the allegations set forth in paragraph “87” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

88. Denies the allegations set forth in paragraph “88” of the Complaint.

89. Denies the allegations set forth in paragraph “89” of the Complaint.

90. Denies the allegations set forth in paragraph “90” of the Complaint.

91. In response to the allegations set forth in paragraph “91” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

92. Denies the allegations set forth in paragraph “92” of the Complaint.

93. Denies the allegations set forth in paragraph “93” of the Complaint.

94. Denies the allegations set forth in paragraph “94” of the Complaint.

95. Denies the allegations set forth in paragraph “95” of the Complaint.

96. Denies the allegations set forth in paragraph “96” of the Complaint.

97. Denies the allegations set forth in paragraph “97” of the Complaint.

98. Denies the allegations set forth in paragraph “98” of the Complaint.

99. Denies the allegations set forth in paragraph “99” of the Complaint.

100. Denies the allegations set forth in paragraph “100” of the Complaint.

101. Denies the allegations set forth in paragraph “101” of the Complaint.

102. In response to the allegations set forth in paragraph “102” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

103. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “103” of the Complaint.

104. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “104” of the Complaint.

105. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “105” of the Complaint.

106. Denies the allegations set forth in paragraph “106” of the Complaint.

107. Denies the allegations set forth in paragraph “107” of the Complaint.

108. In response to the allegations set forth in paragraph “108” of the Complaint,

Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

109. Denies the allegations set forth in paragraph “109” of the Complaint.

110. Denies the allegations set forth in paragraph “110” of the Complaint.

111. Denies the allegations set forth in paragraph “111” of the Complaint.

112. Denies the allegations set forth in paragraph “112” of the Complaint.

113. Denies the allegations set forth in paragraph “113” of the Complaint.

114. In response to the allegations set forth in paragraph “114” of the Complaint,

Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

115. Denies the allegations set forth in paragraph “115” of the Complaint.

116. Denies the allegations set forth in paragraph “116” of the Complaint.

117. Denies the allegations set forth in paragraph “117” of the Complaint.

118. Denies the allegations set forth in paragraph “118” of the Complaint.

119. In response to the allegations set forth in paragraph “119” of the Complaint,

Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

120. Denies the allegations set forth in paragraph “120” of the Complaint.

121. Denies the allegations set forth in paragraph “121” of the Complaint.

122. Denies the allegations set forth in paragraph “122” of the Complaint.

123. In response to the allegations set forth in paragraph “123” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

124. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “124” of the Complaint.

125. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “125” of the Complaint.

126. In response to the allegations set forth in paragraph “126” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

127. Denies the allegations set forth in paragraph “127” of the Complaint.

128. Denies the allegations set forth in paragraph “128” of the Complaint.

129. In response to the allegations set forth in paragraph “129” of the Complaint, Defendant repeats and realleges each response set forth in the preceding paragraphs of its answer, as if fully set forth herein.

130. Denies the allegations set forth in paragraph “130” of the Complaint.

131. Denies the allegations set forth in paragraph “131” of the Complaint.

FIRST AFFIRMATIVE DEFENSE

132. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

133. Defendant Sgt. Pichardo has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any Act of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE

134. Any injuries alleged to have been sustained by plaintiff resulted from the culpable or negligent conduct of others and were not the proximate result of any act of Defendant Sgt. Pichardo.

FOURTH AFFIRMATIVE DEFENSE

135. Plaintiff has failed to comply with New York General Municipal Law §§ 50(e), *et seq.*

FIFTH AFFIRMATIVE DEFENSE

136. Defendant Sgt. Pichardo, to the extent she is sued in her individual capacity, is entitled to qualified immunity since at all times she acted in good faith in the discharge of her job duties and her conduct did not violate any clearly established constitutional or statutory rights which a reasonable person would have known.

SIXTH AFFIRMATIVE DEFENSE

137. At all times relevant hereto, Defendant Sgt. Pichardo acted in good faith and took appropriate action in the discharge of her official duties.

SEVENTH AFFIRMATIVE DEFENSE

138. Defendant Sgt. Pichardo at all relevant times acted in accordance with all laws, rules, and regulations and pursuant to her statutory authority.

EIGHTH AFFIRMATIVE DEFENSE

139. Plaintiff failed to mitigate his alleged damages.

NINTH AFFIRMATIVE DEFENSE

140. Plaintiff's culpable conduct caused or contributed, in whole or in part, to his injuries and or damages.

TENTH AFFIRMATIVE DEFENSE

141. For a separate and distinct affirmative defense, this individual answering Defendant alleges that she is immune from liability for the matters stated in the complaint in that all of her alleged actions, if any, were made in good faith, without malice and performed in her official capacities as an employee of the New York City Police Department.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

142. Defendant Sgt. Pichardo repeats, reiterates and realleges paragraphs "1" through "141" herein as if fully restated at length.

143. The actions of Defendant Sgt. Pichardo at the time and date in issue were performed within the performance of her duty, and she was acting within the scope of her office as a New York City police officer, and the expense of her legal defense must be assumed by the City of New York, pursuant to General Municipal Law section 50-k.

144. By reason of the foregoing, Defendant Sgt. Pichardo will be damaged in an uncalculated amount and she demands the payment of all reasonable attorneys' fees and other disbursements and costs incurred in the defense of this action from the City of New York.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST
DEFENDANT, CITY OF NEW YORK**

145. Defendant Sgt. Pichardo repeats, reiterates and realleges paragraphs "1" through "141" herein as if fully restated at length.

146. If plaintiff was caused damages as alleged in the complaint due to any culpable conduct of other than plaintiff's own, then such damages were due to the culpable conduct, negligent acts or omissions of the City of New York.

147. The actions of Defendant Sgt. Pichardo at the time and date in issue were performed within the performance of her duty, and she was acting within the scope of her employment and office as a New York City police sergeant, and any resulting liability to plaintiff must be assumed by Defendant Sgt. Pichardo's employer The City of New York pursuant to the principle of *respondeat superior*.

148. Based on the principle of *respondeat superior*, if plaintiff recovers any judgment against Defendant Sgt. Pichardo, then she is entitled to recover the amount of such judgment from Defendant City of New York.

WHEREFORE, Defendant Sgt. Pichardo demands judgment:

- I. Dismissing the complaint in its entirety;
- II. Granting indemnification by the City of New York;
- IV. Granting Defendant Sgt. Pichardo the costs, disbursements, expenses and reasonable attorneys' fees and such other relief as this Court may deem just and proper.

Dated: White Plains, New York
December 8, 2016

Respectfully submitted,

THE QUINN LAW FIRM

By: Andrew C. Quinn

Andrew C. Quinn, Esq.
399 Knollwood Road, Suite 220
White Plains, New York 10603
Tel: (914) 997-0555
Fax: (914) 997-0550

Sent by ECF To:

Jason Leventhal
Leventhal Law Group, P.C.
45 Main Street, Suite 230
Brooklyn, NY 11201
(718) 556-9600

Joshua Friedman
Assistant Corporation Counsel
Office of the Corporation Counsel
100 Church Street
New York, NY 10007
(212) 356-2415